

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TIMEGATE STUDIOS, INC.,

Plaintiff,

V.

SOUTHPEAK INTERACTIVE CORP.,
ET AL,

Defendants.

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CIVIL ACTION NO. 4:09-CV-3958

JURY DEMANDED

PLAINTIFF TIMEGATE STUDIOS, INC.'S
SUPPLEMENT TO ITS MOTION FOR INJUNCTIVE RELIEF

Plaintiff TimeGate Studios, Inc. ("TimeGate") respectfully submits this, its Supplement to its Motion for Injunctive Relief and shows the Court as follows:

I. NO SUBLICENSE WAS IN EXISTENCE


1. From the outset of this litigation, the SouthPeak Defendants have alleged that they were a sublicensee to the TimeGate-Gone Off Deep, LLC Publishing Agreement by way of the October 10, 2008 Distribution Agreement. The existence of the Distribution Agreement was withheld from TimeGate until December of 2009 and it did not receive a copy of it until January of 2010.

2. Contrary to the SouthPeak Defendants' position, the Distribution Agreement was not a sublicense as exemplified by the letter attached as Exhibit "A".¹ The letter, which was never executed by TimeGate, reflects the SouthPeak Defendants' awareness that they did not, in fact, have a sublicense as represented to the Court on numerous occasions. Further, the letter also supports TimeGate's contention that the SouthPeak Defendants continued to misrepresent their identity as Defendant Gone Off Deep, LLC (Gamecock).

¹ The existence of Exhibit "A" was not re-discovered until August 8, 2010.

3. In sum, the SouthPeak Defendants were not sublicensees and have clearly infringed upon TimeGate's intellectual property and unlawfully retained over \$5,070,428.27 in sales revenue from Section 8.

Respectfully submitted,


By: 

Scott Weiss, Corporate Counsel
TimeGate Studios, Inc.
Texas Bar No.: 24042134
14140 Southwest Freeway, Suite 200
Sugar Land, Texas 77478
281-295-4122 (Direct)
832-201-0687 (Facsimile)

**ATTORNEYS FOR PLAINTIFF
TIMEGATE STUDIOS, INC.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on Defendants' counsel via the ECF system on August 9, 2010.



Scott Weiss

EXHIBIT “A”



June 24, 2009

Gone Off Deep, LLC
2563 Southwest Grapevine Parkway
Grapevine, TX 76051

Adel Chaveleh
14140 Southwest Freeway
Suite 400
Sugar Land, Texas 77478

**RE: Section 8 Online Distribution Sublicense Approval; Publishing Agreement
for Section 8 By And Between Gone Off Deep, LLC dated June 15, 2007
("Agreement")**

Dear Adel:

Please execute this letter where indicated below confirming your approval that Gone Off Deep, LLC may enter into sublicense agreements through SouthPeak Interactive, LLC with the below listed companies for the sale of digital download sales of Section 8.

Steam
D2D
Trymedia/Real (Gamestop.com)
Gametap/Metaboli
Nexway
Gamersgate
WildTangent
Digital River (Bestbuy.com)
GDI
Gamestreamer
Stardock
Reflexive
Verizon

Best Regards,

A handwritten signature in black ink, appearing to read "Melanie Mroz". The signature is fluid and cursive, with the first name "Melanie" and last name "Mroz" clearly distinguishable.

Melanie Mroz

Agreed and Accepted by
Timegate Studios, Inc.
